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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6236 OF 2005

Ajit Bhagwan Bagal ... Petitioner

Vs.

Mrs. Namrata Ajit Bagal ... Respondent

Mr. M.D. Pokale for the petitioner.

None for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 27TH SEPTEMBER, 2005.

P.C.:-

1. The petitioner is the original respondent in Petition No.C-9 of 2004 pending in the family court at Pune. The said petition is filed by the respondent-wife herein for maintenance.

2. In that petition, the petitioner herein filed an application under section 9A of the Civil Procedure Code, 1908 (for short, "the CPC") for framing preliminary issue as regards jurisdiction. According to the petitioner, the marriage of the petitioner and the respondent was solemnised on 1/12/2000 at Village Phursungi, Dist. Pune. The respondent lastly resided with the petitioner at Kurla, Mumbai and the respondent presently resides at C/o. Bhikaji K. Jagtap at post Naigaon, Taluka Purandar, Dist. Pune. It is the case of the petitioner that in view of this, the family court at Pune has no

jurisdiction to try the petition for maintenance because the marriage was solemnised at Phursungi Grampanchayat area, which is outside the limits of Pune Municipal Corporation.

3. To this application, the respondent filed a reply as follows. "It appears that the marriage hall, wherein the marriage between the above parties took place, is on the border of PMC limits and Grampanchayat limits and falls within the Grampanchayat limits. Hence, appropriate order may kindly be passed."

4. After hearing the parties, the family court rejected the petitioner's application and, hence, this petition.

5. I have heard, at considerable length, the learned counsel appearing for the petitioner. He laid stress on the reply filed by the respondent wherein it is stated that the marriage hall is situated on the border of PMC limits and grampanchayat limits. He submitted that this is an admission made by the respondent. Since the marriage took place within the Grampanchayat limits, the family court at Pune cannot deal with the petition filed by the respondent. He also drew my attention to the certificate issued by the Grampanchayat stating that the said hall falls within its jurisdiction. He, therefore, submitted that the trial court's order be set aside.

6. In the trial court's order, there is a reference to

the order passed by this court in Misc. Civil Application No.37 of 2004. The said order is dated 19/8/2004. This application was filed by the respondent in this court under section 24 of the CPC praying that in view of her failing health, it is not possible for her to attend the divorce petition filed by the petitioner in the family court at Bandra, Mumbai and the divorce petition be transferred to the family court at Pune. After hearing the learned counsel for the petitioner and the respondent, this court observed that the case of inconvenience caused to the respondent is established. This court referred to the affidavit filed by the petitioner wherein he had stated that after the marriage, he came to know that the respondent is suffering from arthritis-ailment/sandhivat and suffering from some other abnormal diseases and that she is a sickly lady. In view of this, this court transferred the divorce petition from Mumbai to Pune. In paragraph 5 of its order, it was noted that even if the petition being Petition No.C-9 of 2004 pending in the family court, Pune, is disposed of, the divorce petition filed by the petitioner in the family court at Bandra, Mumbai will stand transferred to the family court at Pune. It is, therefore, amply clear that this court transferred the divorce petition from family court at Bandra, Mumbai to the family court at Pune because of the deteriorating health of the respondent. By raising objection to the jurisdiction of the family court at Pune to entertain the maintenance petition filed by the respondent, the petitioner is, in

fact, driving the respondent to go to the district court, Pune, for maintenance and defend the divorce petition in the family court at Pune. By this approach, the very purpose of order dated 19/8/2004 passed by this court in Misc. Civil Application No.37 of 2004 is defeated. If the respondent is a sickly lady, sending her to prosecute maintenance petition in the district court at Pune when the divorce petition is pending in the family court at Pune will cause great inconvenient to her. Such order cannot be passed in the writ jurisdiction particularly when this court has transferred the divorce petition filed by the petitioner from the family court at Bandra, Mumbai to the family court at Pune so that no inconvenience is caused to the respondent. So far as the contention that the respondent ought to have filed the maintenance petition in the district court at Pune is concerned, I find no merit in the said contention because it is the case of the respondent that the marriage hall falls on the border of PMC limits and Grampanchayat limits. It is, therefore, reasonable to argue that it also falls within the PMC limits. Hence, no interference is necessary with the impugned order.

7. However, in the circumstances of the case, the family court at Pune is directed to hear and dispose of both the petitions as expeditiously as possible. I am informed by the learned counsel for the petitioner that the petitions are being adjourned from time to time. The family court at Pune shall, as far as possible, avoid granting

adjournments because the petitioner is serving in Mumbai and no inconvenience should be caused to him also. If the petitioner is so advised, he may make an application to the Principal Judge of the family court at Pune praying that both the petitions be disposed of expeditiously and on such application being made, the Principal Judge, family court at Pune will take such steps as are necessary to ensure expeditious disposal of both the petitions.

8. Petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)